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Sandy Garrett

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EXAMINER

COLBERT, ELLA

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/734,046	Applicant(s) GARRETT, SANDY	
	Examiner Ella Colbert	Art Unit 3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-28 and 32-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-28 and 32-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 17-28 and 32-61 are pending. Claims 17-28 and 32-61 have been amended in this communication filed 07/30/08 entered as Response After Non-Final Action.
2. The Objection to claims 17-28 and 32-61 has been overcome by Applicant's amendment to claims 17-28 and 32-61 and are hereby withdrawn.
3. The 35 USC 112, First paragraph rejection is being withdrawn in view of an objection as set forth here below.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the formulas in claims 17, 22, 25, 32, 37, 38, 40, 41, and 45-61 are not found in Applicant's Specification. Therefore, the Specification fails to provide proper antecedent basis for the formulas as claimed. The computer-readable medium in the preamble of claim 52 and the dependent claims 17-28, 32-44, and 53-56 as failing to provide proper antecedent basis for the claimed subject matter.

Claim Objections

Claim 52 is objected to because of the following informalities: Claim 52 recites "... the computer-readable medium containing instructions readable by the computer system .." The "instructions" need to be "readable" and "executable". Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17-28 and 32-61 rejected under 35 U.S.C. 102(b) as being anticipated by (US 6,502,080) Eichorst et al, hereafter Eichorst.

Claim 17, Eichorst discloses, The computer- readable medium defined in claim 52 wherein: A) the quantity is the payment for equipment usage during the time period (col. 1, lines 29-35); B) the instructions direct the computer system to calculate the quantity by employing operations that include: i) multiplying by a price per unit of usage a pre-update aggregate usage and subtracting a total of previous payments, wherein cumulative payments are at least equal to an amount determined by multiplying the cumulative commitment by the price per unit of usage (col. 5, lines 21-54); and ii) updating the pre-update aggregated usage to obtain a value for the updated aggregated usage that reflects the cumulative payments when the cumulative commitment exceeds the pre-update aggregated usage (col. 6, line 45-col. 7, line 6).

Claim 18, Eichorst discloses, The computer-readable medium defined in claim 17 wherein the instructions direct the computer system to: subtract a credit from the payments for the equipment usage for a time period when the pre-update aggregated usage is greater than the cumulative commitment and greater than cumulative actual usage through the time period (col. 4, lines 30-42); and update the pre-date aggregated

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usage to obtain a value for the updated aggregate usage that reflects the credit (col. 4, lines 43-57).

Claim 19, Eichorst discloses, The computer-readable medium defined in claim 18 wherein the instructions to subtract the credit further comprise instructions to: determine a first difference between the pre-update aggregate usage and the cumulative actual usage (col. 4, lines 33-42); determine a second difference between the pre-update aggregate usage and the cumulative commitment (col. 4, lines 43-57); and determine the credit by multiplying the price per unit of usage by a lesser one of the first difference and the second difference (col. 5, lines 21-54).

Claim 20, Eichorst discloses, The computer-readable medium defined in claim 17 wherein the instructions to establish a price per unit of usage further comprise instructions to establish the costs based on at least one of an acquisition cost of the equipment services to be provided, and supplies to be provided (col. 1, line 29-col. 2, line 15).

Claim 21, Eichorst discloses, The computer-readable medium defined in claim 17 wherein the instructions to establish a price per unit of usage further comprise instructions to establish the costs based on at least one of an expected value of the equipment after a predetermined number of time periods, expected remarketing costs, a time value of money, profit margins, and risk of loss (col. 2, lines 46-59).

Claim 22, Eichorst discloses, The computer-readable medium defined in claim 17 containing instructions to: identify a number of time periods as a term for the usage of the equipment (col. 1, lines 28-55); identify a total commitment for the term of usage as

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the cumulative commitment for the time periods of the term (col. 1, line 61-col. 2, line 9); and limit the payments obtained to the total commitment multiplied by the price per unit of usage (col. 9, lines 4-15).

Claim 23, Eichorst discloses, The computer-readable medium defined in claim 22 further containing instructions to obtain a payment to purchase the equipment when a total of payments exceeds the total commitment multiplied by the price per unit of usage (col. 9, lines 16-27).

Claim 24, Eichorst discloses, The computer-readable medium defined in claim 22 further comprising instructions to: determine a price per unit of usage based on continued usage of the equipment beyond the total equipment (col. 5, lines 31-42) and obtain payments for continued usage based on the continued usage multiplied by the price per unit of usage (col. 5, lines 43-54).

Claim 25, Eichorst discloses, The computer-readable medium defined in claim 17 wherein: A) where c_j is an incremental commitment for the time period (col. 1, lines 28-35) and B) the computer-readable medium contains instructions to set the incremental commitment for at least one time period at a start of the equipment usage to a lesser amount than the incremental commitments for other time periods (col. 1, lines 36-55).

Claim 26, Eichorst discloses, The computer-readable medium defined in claim 17 further containing instructions to: increase the minimum number of units of usage (col. 1, line 61-col. 2, line 9); and obtain upgrades for the equipment based on the increase (col. 2, lines 20-30).

Claim 27, Eichorst discloses, The computer-readable medium defined in claim 17, further comprising instructions to: remarket the equipment to obtain new equipment (col. 1, line 61-col. 2, line 20); and adjust the payments based on a difference between a market value and a value realized by the remarket (col. 1, lines 36-45).

Claim 28, Eichorst discloses, The computer-readable medium defined in claim 17, wherein the equipment comprises multiple pieces of equipment and wherein the instructions to obtain the value of actual usage direct the computer system (col. 1, lines 8-11) to combine usage for the multiple pieces of equipment (col. 3, line 21-col. 4, line 29).

Claim 32, Eichorst discloses, The computer-readable medium defined in claim 52 wherein the quantity is the payment for equipment usage during the time period, and the instructions direct the computer system to: establish a price per unit of usage (col. 1, line 61-col. 2, line 15); determine a greater one of a pre-update aggregated usage and the cumulative (col. 1, lines 28-55); multiply the greater one by the price per unit of usage and subtract a total of previous depreciation to obtain a depreciation expense for the time period (col. 5, lines 21-54); and update the pre-update aggregated usage to obtain an updated aggregated usage that reflects the cumulative minimum commitment when the cumulative minimum commitment is greater than the pre-update aggregated usage (col. 6, line 45-col. 7, line 6).

Claim 33, Eichorst discloses, The computer-readable medium defined in claim 32 wherein the instructions establish a price per unit of usage comprise instructions to

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adjust the price per unit of usage when a predetermined threshold amount of usage is exceeded (col. 2, lines 46-59).

Claim 34, Eichorst discloses, The computer-readable medium defined in claim 32 wherein the instructions to establish a price per unit of usage comprise instructions to: identify costs of the equipment (col. 4, lines 33-42); and determine the price per unit of usage based on the costs of the equipment (col. 4, lines 43-57).

Claim 35, Eichorst discloses, The computer-readable medium defined in claim 34 wherein the instructions to identify costs of the equipment comprise instructions to determine the costs based on at least one of an acquisition cost of the equipment, service to be provided, and supplies to be provided (col. 3, lines 21-64).

Claim 36, Eichorst discloses, The computer-readable medium defined in claim 35 wherein the instructions to identify costs of the equipment further comprise instructions to determine costs based on at least one of an expected value of the equipment after a predetermined number of time periods, remarketing costs, a time value of money, profit margins, and risk of loss (col. 1, line 29-col. 2, line 15).

Claim 37, Eichorst discloses, The computer-readable medium defined in claim 32 wherein the instructions direct the computer system to: identify a number of time periods as a term for the usage of the equipment (col. 1, lines 28-55); and limit the depreciation expense to a total commitment equal to the cumulative commitment for the time periods of the term multiplied by the price per unit of usage (col. 9, lines 4-15).

Claim 39, Eichorst discloses, The computer-readable medium defined in claim 37, further comprising instructions to: determine a price per unit of usage based on

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continued usage of the equipment beyond the total commitment (col. 5, lines 31-42); and incur additional depreciation expense for the continued usage based on the continued usage multiplied by the price per unit of usage (col. 5, lines 43-54).

Claim 40, Eichorst discloses, The computer-readable medium defined in claim 32, wherein: A) where c_j is an incremental commitment for the time period (col. 1, lines 28-35) and B) the computer-readable medium contains instructions to set the incremental commitment for at least one time period at a start of the equipment usage to a lesser amount than the incremental commitment for other time periods (col. 1, lines 36-55).

Claim 41, Eichorst discloses, The computer-readable medium defined in claim 32, further comprising instructions to: increase the cumulative commitments (col. 1, line 61-col. 2, line 9); and obtain upgrades for the equipment based on the increase (col. 2, lines 20-30).

Claim 42, Eichorst discloses, The computer-readable medium defined in claim 32, wherein the instructions direct the computer system to: remarket the equipment to obtain new equipment (col. 1, line 61-col. 2, line 20); and adjust the depreciation expense based on a difference between a market value and a value realized by the remarket (col. 1, lines 36-45).

Claim 43, Eichorst discloses, The computer-readable medium defined in claim 32, wherein the instructions to incur the depreciation expense further comprise instructions to: subtract a credit from the depreciation expense for a time period when the pre-update aggregated usage is greater than the cumulative commitment through

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the time period, and greater than the cumulative usage through the time period (col. 4, lines 30-42); and update the pre-update aggregated usage obtain an updated aggregated usage that reflects the credit (col. 4, lines 43-57).

Claim 44, Eichorst discloses, The computer-readable medium defined in claim 32, wherein the equipment comprises multiple pieces of equipment, the instructions further directing the computer system to: track usage per time period for each one of the multiple pieces of equipment (col. 3, lines 22-64); and combine the usages per time period for the multiple pieces of equipment to obtain the actual usage (col. 3, line 65-col. 4, line 29).

Claims 45, 52, and 57. Eichorst discloses, For specifying at least one of payments for and depreciation of equipment, comprising:

A) obtaining cumulative commitments C_j to usage of the equipment for successive time periods $j = 1, 2, \dots$ (col. 1, lines 19-35); and

B) employing a computer system to, for each given, i th time period of a plurality of the time periods: i) obtain the value u_j of actual usage of the equipment (col. 1, lines 36-55); ii) calculate therefrom a quantity p_i based on a usage value equal to the difference $A_i - A_{\sim i}$ between an updated aggregated usage $A_{\sim i}$ for the given time period and an updated aggregated usage $A_{\sim i}$ for the previous time period, where the updated aggregated value A_k for any, k th time period is at least as great as the greater of the k th time period's cumulative commitment C_k and the k th period's cumulative k actual usage $U_k = \sim\text{'us}$ (col. 1, line 61-col. 2, line 15); and

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iii) provide an output that specifies the quantity thus calculated as at least one of the payment and the depreciation for the given time period (col. 4, line 58-col. 5, line 20).

Claims 46, 53, and 58, Eichorst discloses, wherein A_k is the greater of: A) the k th time period's cumulative commitment C_k (col. 5, lines 21-30); and B) the sum of the k th time period's actual usage u_k and the previous time period's updated aggregated usage A_{k-1} (col. 5, lines 21-54).

Claims 47, 54, and 59. Eichorst discloses, wherein the quantity p calculated for the given, i th time period equals the product $r_i \cdot (A_{\sim} - A_{\sim I})$ of a price r_{\sim} per unit of usage and the difference $A - A_{\sim I}$ between the updated aggregated usages of the given and previous time periods (col. 6, line 61-col. 7, line 6).

Claims 48 and 51. Eichorst discloses, further including at least one of incurring depreciation expense in the amount of p_i and making or receiving a payment in the amount of p_i (col. 1, lines 28-35 and line 61-col. 2, line 9 and lines 20-31).

Claims 49 and 60. Eichorst discloses, wherein A_{\sim} is the greater of the i th time period's cumulative commitment C and the i th time period's cumulative actual usage $U_{\sim, \sim I}$ (col. 3, line 58-col. 4, line 14).

Claims 50, 56, and 61. Eichorst discloses, wherein the quantity p calculated for the given, i th time period equals the product $r \cdot (A_i - A_{\sim I})$ of a price r per unit of usage and the difference $A - A_{\sim I}$ between the updated aggregated usages of the given and previous time periods (col. 4, lines 30-57).

Response to Arguments

Applicant's arguments filed 07/30/08 have been fully considered but they are not persuasive.

Issue no. 1: Applicant argues: Applicant requests that the Examiner reconsider and withdraw the 35 USC 112, first paragraph rejections based on the presence of equations in the claims because those equations merely describe in a more-compact format what the specification originally disclosed has been considered but is partially persuasive. Response: The 35 USC 112, first rejection has been withdrawn. Supra. However, the formulas have been objected to for a lack of antecedent basis. The formulas that are in the claims need to be incorporated into the Specification to point out in the table of Figure 1 and the table that bridges pages 19 and 20 where the process, instructions, and computer system for specifying at least one payments for the depreciation of equipment ... takes place.

Also, Applicant's computer-readable medium needs to have the instructions executable. Otherwise, the instructions are considered just text on a computer-readable medium which are not considered statutory. The Examiner has given an objection for the recitation of "A computer-readable medium" to afford Applicant the opportunity to amend the claim.

Issue no. 2: Applicant argues: Eichorst et al. does not compute payments or depreciation from both usage commitments and actual usage in the way Applicant does and specifically Applicant calculates for each of a succession of time periods a payment or depreciation value equal to the difference between current and previous aggregate

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computed from cumulative values of a usage commitment and an actual usage up to that period while in contrast Eichorst et al.'s method is directed to arriving at a reserve value or lease-contract terms by predicting what various cost components will likely be; it does not base calculation of each succession time period's value on, inter alia, what the actual aggregate usage has been up to that period. Nor do the excerpts on which the Examiner base the rejections indicate otherwise has been considered but is not persuasive. Response: The leasing of a vehicle for a period of time, the lease term which begins the month that the lease was entered into a book and ending on a so-called scheduled maturity date and the contract will specify an amount of money that the lessee pays to lease the vehicle which is usually for a month. A vehicle depreciates during the time that it is in use and the usage period with a commitment is the contract on a month to month basis. The various cost components are the residual value that the lessee may pay at the scheduled maturity date to purchase the vehicle from the lessor. According to the best that it can be understood, it is interpreted that Eichorst discloses these claim limitations.

Issue no. 3: Applicant argues: A careful reading of Eichorst reveals that it refers only to (presumably, diminishing prices that might be obtained by selling a car at various dates in the future and the passage in col. 5, lines 21-54 contains nothing about obtaining one date's value by adding actual usage to a previous date's value has been considered but is not persuasive. Response: It is unclear what Applicant means by "obtaining a date's value" and "a previous date's value". The Examiner does not find "obtaining a date's value" or "a previous date's value" or "a date's value" in Applicant's

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Specification and these recitations are not found in claims 45, 52, and 57. Therefore it is interpreted that Eichorst does disclose this claim limitation in col. 5, lines 21-54.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Issue no. 4: Applicant argues: The Examiner relies on lines 36-55 and col. 1 of Eichorst et al. but a careful reading of the passage reveals that it deals only with setting the lease contract's terms in accordance with the value the lessor might expect to obtain for the leased automobile in an auction conducted at the end of the lease for all that is apparent in that (or any other) passage, those terms are set at the beginning of the lease term and therefore do not depend on any month's actual usage (which cannot be known when the terms are set) so Eichorst et al. neither discloses nor suggest claims 45, 52, and 57 much less disclose or suggest the subject matter of any claim that depends on any of the independent claims has been considered but is not persuasive.

Response: An automobile when it is under lease depreciates for every month that it is under a lease and driven (used). The automobile has a higher value when it is new and only has no miles or 10-14 miles on it and as it accumulates more miles and use the value of the equipment (automobile) decreases which is over a period of time.

Therefore, it is interpreted that Eichorst in combination The Courts have stated that to be utilized "as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d

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1443, 1447 (Fed. Cir. 1992). As such “it is necessary to consider “the reality of the circumstances” -- in other words, common sense -- in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor.” In re Wood, 599 F.2d 1032, 1036 (CCPA 1979). Examiner asserts that based upon common sense, the field of the references and/or the problem the inventor was concerned about, that the cited prior art reference would have been utilized by a skilled artisan in the art.

The question of whether a reference is analogous art is not relevant to whether that reference anticipates. A reference may be directed to an entirely different problem than the one addressed by the inventor, or may be from an entirely different field of endeavor than that of the claimed invention, yet the reference is still anticipatory if it explicitly or inherently discloses every limitation recited in the claims. *State Contracting & Engineering Corp. v. Condotte America, Inc.*, 346 F.3d 1057, 1068, 68 USPQ2d 1481.

Issue no. 5: Applicant argues: The passage in col. 3, line 58-col. 4, line 14 of Eichorst et al. merely lists various data that Eichorst’s calculations will use; it describes no calculation –and it makes no mention of cumulative commitment or actual usage has been considered but is not persuasive. Response: Even though the reference does not expressly state that a calculation is performed, Eichorst does disclose a database for storing the variables and data input into one or more predictive models to obtain a net reserve for each vehicle and the net reserve for a vehicle being a function of the reserve amount and a predicted market value loss (MVL) for the vehicle at the scheduled maturity data and the net reserve corresponding to a difference of the reserve amount

and the predicted market value loss (particularly on an aggregate portfolio basis" which indicates a cumulative calculation or commitment.

"Claims in a pending application should be given their broadest possible interpretation". *In re Pearson*, 181 USPQ 641 (CCPA 1974).

"An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed ...". *In re Zletz* 13 USPQ2d 1320 (Fed. Cir. 1989).

"We are not persuaded by any sound reason why, at any time before the patent is granted, an applicant should have limitations of the specification read into a claim where no express statement of the limitation is included in the claim ... However, this court has consistently taken the tack that claims yet unpatented are to be given the broadest reasonable interpretation consistent with the specification during the examination of a patent application since the applicant may then amend his claims, the thought being to reduce the possibility that, after the patent is granted, the claims may be interpreted as giving broader coverage than is justified." *In re Prater*, 162 USPQ 541 (CCPA 1969).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Tuesday, and Thursday, 5:30AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dixon Thomas can be reached on 571-272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Ella Colbert/
Primary Examiner, Art Unit 3696

April 7, 2009